

**Internal Revenue Service
Director, Exempt Organizations**

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**Department of the Treasury
P.O. Box 2508
Cincinnati, Ohio 45201**

Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:

**UIL
4942.03.07**

LEGEND

C- State Name
D- Name
E- Date
F- Historical Figures
G- Location
H- Court Name
J- Municipal Park Commission
K- Location
L- Federal Agency
M- Art Association

s- Dollar Amount
t- Dollar Amount
v- Dollar Amount
w- Dollar Amount
x- Dollar Amount

Dear

By letter dated December 31, 2009, you requested approval that a set-aside in the amount of \$s for the taxable year ending December 31, 20 , meets the requirements of section 4942(g)(2)(B)(i) of the Internal Revenue Code of and accordingly constitutes a qualifying distribution under section 4942(g) of the Code.

FACTS

You were formed under the laws of the State of C. You are a nonexempt charitable trust described in section 4947(a)(1) of the Code treated as a private non-operating foundation under section 509(a).

You were created by the will of D, dated E, for erecting bronze statues of F at G. However, H, the court exercising jurisdiction over trusts of your kind, directed that the statues be erected instead on the approach to the city art museum.

To date six statues have been erected on that site. The city art museum and J have requested the statues be moved to a new location, due to additions to the city art museum and changes in landscaping. The new site will be K as long as the necessary governmental approvals are obtained. The set aside of \$s is for relocating the statues to K. For you to be able to make disbursements for this purpose, you must petition H to approve a modification of the terms of the trust. You will also seek H's permission to make disbursements from the principal, currently blocked by the terms of the will. In the event that the modification of the purposes of the trust is denied by H, you will disburse the set-aside funds in accordance with the original purpose of the trust, commissioning, constructing and erecting a seventh statue.

Initial estimates indicate the cost of relocating a single statue is \$t; the cost of relocating six may therefore exceed \$v. Your net accounting income currently runs at about \$w per annum. A landscape architect will be retained to develop a formal detailed proposal for the relocation by December 31, 2010, and the completed proposal will be presented for approval to L by March 30, 2011. You anticipate that L's approval of the project and all other necessary governmental approvals will be granted. You will thereupon petition H to authorize the use of your accumulated income and principal in connection with the relocation of the statues. You anticipate that H will approve the modifications by June 30, 2011. Because your Trustees anticipate that the cost to complete the entire project will exceed your available funds, you intend, contingent on H's approval of your petition, to retain M, a public charity described in section 501(c)(3) of the Code, to provide fundraising services and manage the relocation of the statues. M will select the professionals and contractors for the project and coordinate the work and will be retained before June 30, 2011. The relocation work will commence in 2011 and continue through 2013. The entire project will be completed no later than December 31, 2014.

Should you fail to obtain governmental approval of the proposed relocation or H denies your petition for modifications to the trust, you will commission the creation of a seventh statue at an estimated cost of \$w. The set-aside will then be disbursed for this alternative project before December 31, 2014.

You have represented that the requested set-aside will not be used to correct deficiencies in your distributions for prior taxable years, a qualifying distribution sufficient to effect correction having been made before December 31, 2009. You have represented that there will be no additions to the current set-aside.

LAW

Section 4942(g)(1) of the Code defines "qualifying distribution" as (a) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private foundation which is not an operating foundation, except as otherwise provided; (b) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4942(g)(2)(A) of the Code provides that, for all taxable years beginning on or after January 1, 1975, an amount set aside for a specific project within one or more purposes of section 170(c)(2)(B) may be treated as a qualifying distribution if the amount meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B)(i) of the Code provides that an amount set aside for a specific project may be treated as a qualifying distribution if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary the amount set aside will be paid for the specific project within five years, and the specific project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds (the "suitability test").

Section 4947(a)(1) of the Code provides that for purposes of Chapter 42, a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B) and for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, shall be treated as an organization described in section 501(c)(3).

Reg. 1.501(c)(3)-1(d)(2) provide that the term "charitable" is used in IRC 501(c)(3) in its generally accepted legal sense and includes erection or maintenance of public buildings, monuments, or works.

Section 53.4942(a)-3(a)(2)(iii) of the Foundations and Similar Excise Taxes Regulations defines as a qualifying distribution any amount set aside within the meaning of paragraph (b) of section 3.

Section 53.4942(a)-3(b)(1) of the Regulations provides that the amounts of income set aside for a specific project for one or more of the purposes in section 170(c)(1) or 170(c)(2)(B) of the Code may be treated as qualifying distributions for the tax year(s) in which such amounts are set aside (but not in the tax year in which actually paid) if the requirements of section 4942(g)(2) and paragraph (b) are satisfied. The requirements of paragraph (b) are satisfied if the foundation establishes to the satisfaction of the Commissioner the amount set aside will be paid for the specific project within 60 months after it is set aside, and (i) the set-aside otherwise meets the suitability test of section 53.4942(a)-3(b)(2) or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the Regulations provides that the suitability test for a set-aside is met if the foundation establishes the specific project is one in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related investments, or where grants are made as part of a matching-grant program.

Section 53.4942(a)-3(b)(7)(i) provides that a private foundation must obtain Internal Revenue Service approval of its set-aside of income under the suitability test by applying before the end of the tax year in which the amount is set aside.

Section 53.4947-1(a) of the Regulations subjects trusts which are not exempt from taxation under section 501(a), all or part of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B) and have amounts in trust for which a deduction was

allowed to the same requirements and restrictions as are imposed on private foundations, including the provisions of section 4942.

In Revenue Ruling 74-450, 1974-2 C.B. 388, an operating foundation's conversion of a portion of newly acquired land into an extension of an existing wildlife sanctuary and the remainder into a public park under a four year construction contract, under which payments were made mainly during the last two years, was held to constitute a specific project within the meaning of section 4942(g)(2)(A) of the Code and section 53.4942(a)-3(b)(2) of the Regulations.

ANALYSIS

You sought timely approval of your set-aside of income in accordance with section 53.4942(a)-3(b)(7)(i).

As required by section 4942(g)(2)(A) of the Code and section 53.4942(a)-3(b)(1) of the Regulations, your proposed set-aside will be used to accomplish purposes described in section 170(c)(2)(B) of the Code, namely, to maintain public monuments, a charitable purpose in the generally accepted legal sense (Reg. 1.501(c)(3)-1(d)(2)).

The funds set aside will be expended for a project which is a "specific project" within the meaning of section 53.4942(a)-3(b)(2), namely, the relocation of statues of historically significant figures from their current site to another site of equal suitability. Your project resembles that described in Revenue Ruling 74-450, which involved the construction and maintenance of a public work, to wit, a public park.

You have credibly represented that the amount set-aside for this specific project will be paid out within 60 months from the set-aside, as required by section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(1) of the Regulations.

Your project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds. In the language used by section 53.4942(a)-3(b)(2) of the Regulations, your specific project is "one in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects." The cost of the project far exceeds what you are normally capable of distributing in any given year, and most of the expenditures can only occur when the project has cleared two successive hurdles, governmental approval of the proposed relocation and H's modification of the trust.

Your project therefore satisfies the suitability test as set forth in section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the Regulations.

RULING

Based on the foregoing, the set-aside of \$s for the taxable year ending December 31, 20 , meets the requirements of section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g).

We direct your attention to section 53.4942(a)-3(b)(8) of the Regulations, entitled "Evidence of Set-Aside." This section provides that any set-aside approved by the Internal Revenue Service shall be evidenced by the entry of a dollar amount in the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Further, the amount of the set-aside must be taken into account in determining the foundation's minimum investment return (see section 53.4942(a)-2(c)(1) of the Regulations), and any income attributable to a set-aside must be taken into account in computing adjusted net income (see section 53.4942(a)-2(d) of the Regulations).

This letter is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Internal Revenue Service. This letter does not address the applicability of any section of the Code or Regulations to the facts submitted other than with respect to the sections described.

This letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Please keep a copy of this letter in your permanent records.

If you have any questions about this letter, please contact the persons whose name and telephone number are shown above in the heading of this letter.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements